IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.14309 of 2006
DATE OF DECISION: 8.9.2006
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Haryana Urban Development Authority, Hisar

..PETITIONER

VS.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.

HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Jangvir Singh Hooda, Advocate
for the petitioner.
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JUDGMENT:

Challenge in this petition filed under Articles 226/227 of the Constitution of India is to the award dated 3.2.2006 (Annexure P-1) by virtue of which respondent No.2-workman has been ordered to be re-instated with continuity of service and other consequential service benefits along with 50% back wages.

The facts are that respondent No.2-workman joined the petitioner-department as Sweeper on 1.3.1989. His services were terminated in September 1996, which gives rise to an industrial dispute. The dispute was referred to the Labour Court for adjudication. The plea of the workman-respondent No.2 is that his termination is in violation of provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). He had completed 240 days in 12 calendar months preceding the date of his termination. The persons junior to him have been retained in service. The department contested the claim of the workman on the averments that the

workman never completed 240 days of service and he himself abandoned the job. The Labour Court vide the impugned award answered the reference in the manner noticed above. Hence the present writ petition.

We have heard the learned counsel for the petitioner and have perused the paper book as also the impugned award.

Firstly, it has been argued on behalf of the petitioner-department that the services of the workman were never terminated, rather he himself abandoned the job after September 1996. We are not at all convinced with the afore-stated contention of learned counsel for the petitioner. The question whether the employee has abandoned his service or not is a question which is required to be resolved in the light of facts and circumstances of each case. There cannot be any strait-jacket formula in that regard. A bare perusal of the impugned award shows that for the reasons best known to it, the department has led no evidence before the Labour Court. In other words, there is not an iota of evidence on record, which, in the facts and circumstances of this case, is suggestive of the fact that it is the workman who himself abandoned the job. Thus, in absence of any evidence, the Labour Court has rightly concluded that this plea is only to wriggle out of Section 25-F of the Act.

Learned counsel for the petitioner has further argued that the respondent-workman had not completed 240 days in preceding twelve calendar months. Moreover, the claim of the workman was not maintainable due to delay and laches. The arguments are not tenable. It is now well settled proposition of law as held in **Range Forest Officer Vs. S.T. Hadmani JT 2002 (2) SC 238, Manager, Reserve Bank of India, Bangalore Vs. S. Mani and others, 2005 (5) SCC 100** and **R.M. Yellati**

Vs. The Asst. Executive Engineer, 2006 (1) SCC 106, that burden of proof is on the workman to show that he had in fact worked for more than 240 days in the year preceding his termination. This burden has to be discharged by the workman by adducing cogent and sufficient evidence. The stand of the workman right from the beginning was that he had worked as Sweeper from March 1,1989 till his services were illegally terminated in September 1996. A bare perusal of the award shows that on the application made by the workman, the Labour Court directed the department to produce the record relating to the workman i.e. muster rolls and salary bills. But due to the reasons best known to it, the department did not produce the said record pertaining to the total span of service of the workman despite availing ample opportunities. The said record was clinching in nature to determine the respective stand of the parties that the workman had or had not worked for 240 days in twelve calendar months preceding the date of his termination. The record was with the department. They were required to maintain it in due course of their business, as envisaged under Section 25-D of the Act. The department was heavily burdened to produce the same when there were specific orders by the Court. Since the department, withheld the relevant record of the workman and failed to led any evidence to rebut the claim of the workman, the Labour Court has rightly drawn an adverse inference against the department and has upheld the version of the workman of his having completed 240 days. Nothing has been shown to us to take a contrary view. This Court is left with no other option but to endorse the view of adverse inference taken by the Labour Court.

Moreover, the plea of limitation was available with the petitioner-department before the Labour Court. But no such plea had been

raised by the petitioner-department. Thus, the petitioner-department cannot be permitted to raise such a plea before this Court. for the first time

In view of what has been stated above, we find no infirmity or illegality in the findings arrived at by the Labour Court. No interference is called for. The petition is wholly without merit and the same is dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J.S. NARANG)
JUDGE

September 8,2006
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